

CITY OF MAPLE VALLEY, WASHINGTON

ORDINANCE NO. O-12-504

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON, AMENDING MAPLE VALLEY MUNICIPAL CODE CHAPTER 18.30, PERMITTED USE TABLES; PROVIDING FOR SEVERABILITY, ESTABLISHING AN EFFECTIVE DATE, AND PROVIDING FOR CORRECTIONS.

WHEREAS, Initiative Measure No. 692, approved by the voters of Washington State on November 3, 1998, and now codified as Chapter 69.51A RCW, Medical Cannabis, created a limited defense to criminal marijuana charges under state (not federal) law if the person charged demonstrates that he or she is a qualifying patient or designated provider as defined in Chapter 69.51A RCW; and

WHEREAS, the Washington State legislature passed Engrossed Second Substitute Senate Bill (ESSSB) 5073, Medical Cannabis, to become effective on July 22, 2011 (now codified at Ch. 69.51A RCW); and

WHEREAS, the Governor vetoed 36 of the 58 sections of that bill; and

WHEREAS, federal law, as set forth in 21 U.S.C. §841(a), makes it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance, and pursuant to 21 U.S.C. §812, marijuana is a Schedule I controlled substance; and

WHEREAS, state law, as set forth in RCW 69.50.401(1) provides that is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance and marijuana is a Schedule I controlled substance as set forth in RCW 69.50.204(c)(30); and

WHEREAS, the U.S. Attorneys for Washington wrote a letter dated April 14, 2011 to Governor Gregoire that reiterated that marijuana possession, production and distribution is a federal criminal offense and that State workers would not be immune from prosecution under federal law even if state law decriminalized the use, possession and production of marijuana for medical purposes; and

WHEREAS, Governor Gregoire's veto message pertaining to ESSSB 5073, dated April 29, 2011, explained that several sections of that bill were vetoed as a result of the U.S. Attorneys' letter as the Governor was unwilling to place State workers at risk of federal prosecution for enforcing and following state law stating, "No state employee should be required to violate federal criminal law in order to fulfill duties under state law..."; and

WHEREAS, uncertainties and ambiguities exist regarding the meaning and enforcement of certain sections of ESSSB 5073 because of the Governor's veto of 36 sections of that bill; and

WHEREAS, Section 403 of ESSSB 5073 allows the qualifying patients to create and participate in “collective gardens” for the purpose of producing, processing, transporting, and delivering cannabis for medical use for no more than 10 qualifying patients and where the collective garden contains no more than fifteen plants per patient up to a total of forty-five plants and where no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis is contained at the collective garden; and

WHEREAS, Section 1102 provides discretion for a city to adopt zoning requirements, business licensing requirements, health and safety requirements, and business taxes as those requirements relate to the production, processing, or dispensing of medical marijuana; and

WHEREAS, the State Legislature failed to adopt any amendments to Ch. 69.51A RCW, Medical Cannabis, in the 2012 Legislative session and therefore the ambiguities created by Governor Gregoire’s veto of ESSSB 5073 remain unresolved; and

WHEREAS, Joseph T. Rannazzisi, of the U.S. Department of Justice, Drug Enforcement Administration, sent a letter to the Clark County Commissioners in February, 2012, reiterating that “...marijuana is a Schedule I controlled substance and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.” The letter went on to inform the Clark County Commissioners that “...anyone who knowingly carries out the marijuana activities contemplated by Washington state law, as well as anyone who facilitates such activities, or conspires to commit such violations, is subject to criminal prosecution as provided by the CSA [Controlled Substances Act]...Such persons may also be subject to money laundering statutes. In addition, the CSA provides for forfeiture of real property and other tangible property used to facilitate the commission of such crimes, as well as the forfeiture of all money derived from, or traceable to, such activity.”; and

WHEREAS, following the formal close of the 2012 Legislative Session, the City Manager recommended that the City Council consider amending its zoning code to prohibit collective gardens as an authorized use due to the risk that is present in asking City employees to facilitate permitting actions that violate federal law, especially in light of the 2012 letter from Mr. Rannazzisi to the Clark County Commissioners; and

WHEREAS, the City’s insurer, Washington Cities Insurance Authority (WCIA), has indicated that its insurance coverage does not include coverage for intentional or criminal acts and there is no certainty that if a City employee were prosecuted under federal law for “facilitating” activities deemed to violate the federal Controlled Substances Act that the City would have any insurance coverage to assist in the defense of a City employee who was acting within the scope of his/her duties under any City code or ordinance that was alleged by the federal government to violate federal law; and

WHEREAS, the City Council, in Resolution R-12-873, requested the Planning Commission's expedited review of proposed amendments to the City's municipal code to prohibit collective gardens as an authorized land use in order to obtain a recommendation prior to the termination of the City's moratorium established in Ordinance O-11-463; and

WHEREAS, the City Council received a recommendation from the Planning Commission dated June 6, 2012, after the Planning Commission held a public hearing on the proposed amendments to Chapter 18.30 MVMC; and

WHEREAS, the City's SEPA responsible official has issued a Determination of Nonsignificance (DNS) on May 29, 2012 and the comment period ended on June 12, 2012; and

WHEREAS, the City requested and was granted expedited review on June 6, 2012 of the proposed amendments to Chapter 18.30 by the Department of Commerce, thus completing the State notice requirements; and

WHEREAS, the City's moratorium ordinances, O-11-463 and O-11-467 will expire July 11, 2012; and

WHEREAS, the City Council recognizes that state law and federal law are in conflict and has supported Governor Gregoire's effort to seek a re-classification of cannabis under federal law, from a Schedule I controlled substance, to a Schedule II controlled substance in order that cannabis may be legally prescribed, and in order that state law and federal law will no longer be in conflict; and

WHEREAS, similar to the concerns expressed by Governor Gregoire in her veto message for ESSSB 5073, the City Council is unwilling to place City employees and Maple Valley citizens at risk of federal prosecution for activities taken to permit a land use and associated activities that may be deemed by the federal government to violate federal law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Maple Valley Municipal Code 18.30.010 is hereby amended to read as follows:

18.30.010 Establishment of uses; Prohibited Uses.

A. The use of property is defined by the activity for which the building or lot is intended, designed, arranged, occupied, or maintained. A use that will operate for less than 60 days may be considered a temporary use, and be subject to the requirements of MVMC 18.30.015 pertaining to temporary uses. All applicable requirements of this code, or other applicable State or federal requirements, shall govern a use located in the City of Maple Valley.

B. Any land use that violates a City ordinance, or the City municipal code, and/or state law, and/or federal law is strictly prohibited.

C. Pursuant to RCW 69.51A.140(1) cities have discretion to adopt zoning for a collective garden. A collective garden use authorized under RCW 69.51A.085 is strictly prohibited in any zoning district in the City of Maple Valley.

D. Pursuant to the Washington Governor's veto of all provisions relevant to medical marijuana/medical cannabis dispensaries in ESSSB 5073, Chapter 181, Laws of 2011 (partial veto) such dispensaries are strictly prohibited in any zoning district in the City of Maple Valley, the reference to "licensed dispensers" in RCW 69.51A.140(1) notwithstanding.

Section 2. Maple Valley Municipal Code 18.30.020 is hereby amended to read as follows:

18.30.020 Interpretation of land use tables.

A. The land use tables in this chapter determine whether a specific use is allowed in a zoning district. The zoning district is located on the vertical column and the specific use is located on the horizontal row of these tables. The administrative requirements of Chapter 18.100 MVMC apply to all applications.

B. If no land use is identified or no symbol appears in the box at the intersection of the column and the row, the use is not allowed in that district, except for certain temporary uses.

C. If the letter "P" appears in the box at the intersection of the column and the row, the use is allowed in that district subject to the review procedures and general requirements of the code. Design review or compliance with the Community Design Guidelines and requirements may be required pursuant to Chapter 18.70 MVMC. The process types and process steps tables of MVMC 18.100.040(A) and (B) apply.

D. If the letter "C" appears in the box at the intersection of the column and the row, the use is permitted subject to the conditional use permit review procedures and the general requirements of the code. The process types and process steps tables of MVMC 18.100.040(A) and (B) apply.

E. If the letter "A" appears in the box at the intersection of the column and the row, the use is allowed in that district as an accessory to the primary use.

F. If the letter "M" appears in the box at the intersection of the column and the row, the use is allowed subject to the master planned community development review procedures and requirements of the code contained in Chapter 18.120 MVMC.

G. If a number appears in the box at the intersection of the column and the row, the use may be allowed subject to the appropriate review process indicated above, the general requirements of the code and the specific conditions set forth in the corresponding number or section immediately following the permitted use table.

H. All applicable requirements shall govern a use whether or not they are cross-referenced in a section.

Section 3. Severability. If any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Effective Date. A summary of this ordinance shall be published in the official newspaper of the City, and this ordinance shall take effect and be in full force July 10, 2012.

Section 5. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THIS 25th DAY OF JUNE, 2012.

William T. Allison, Mayor

ATTEST:

Shaunna Lee-Rice, City Clerk

APPROVED AS TO FORM:

Christy A. Todd, City Attorney

Date of Publication: July 3, 2012

Effective Date: July 10, 2012